1-6-92

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting — The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday and Tuesday, January 6 and 7, 1992, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members Present — Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle, H. Kay Hedge, John P. Kibbie, Dale L. Tieden; Representatives Ruhl Maulsby, Janet Metcalf, David Schrader, and Jane Teaford.

Staff present: Joseph A. Royce, Legal Counsel; Paula S. Dierenfeld, Governor's Administrative Rules Coordinator; Phyllis Barry, Administrative Code Editor, Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons.

Convened — The meeting was called to order by Chairman Priebe at 10 a.m. and he welcomed visitors Maryanne Rhuby, Executive Director, Minnesota Legislative Committee to Review Administrative Rules; and Senator John Snyder and Mary Estes, Director, Joint Committee on Administrative Rules, Missouri.

AGRICULTURE — John Hinshaw, Coordinator, Horse and Dog Program; Walter Felker, State Veterinarian; and Ronald Rowland, Regulatory Director, represented the Agriculture and Land Stewardship Department for the following agenda:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Registration of Iowa-foaled horses and Iowa-whelped dogs, 62.10(2), 62.15(3)"b," 62.16(4), 62.20(2), 62.25(3)"b," 62.26(4), 62.30(2), 62.35(3)"b," 62.36(4), 62.41(2), Notice ARC 2651A ············ 11/25/91

Pseudorabies disease, 64.154, 64.155(2), 64.155(3), Notice ARC 2650A 11/25/91

Ch 62 — Amendments to Chapter 62 regarding registration of Iowa-foaled horses and Iowa-whelped dogs used for pari-mutuel racing were reviewed. No Questions.

Ch 64 — Felker briefed the Committee on amendments to rules on pseudorabies disease in Chapter 64 with respect to tagging requirements for swine. He clarified for Priebe that feeder pigs are tagged but can be identified by herd or lot, whereas the breeding animals must be tagged so they are individually identified.

Maulsby inquired how far the Department's liability extends regarding the farm movement of animals. Felker spoke of the massive feeder pig movement in Iowa and difficulty in monitoring every movement.

Felker advised Kibbie that the amendments were intended to reinforce existing rules relating to farm-to-farm movement of feeder swine. Rowland interjected that the Attorney General's Office had recommended the clarification. There was lengthy discussion on movement from farm to farm with members contending that the legislature did not intend to require ear tags in this instance. Tags were required when movement was from farm to sale barn to farm.

Disagreement with the proposal focused on 64.154(4), first unnumbered paragraph which provided that the sale must be a valid two-party transaction without commission or fees paid by the seller or buyer to a third party.

AGRICULTURE (Cont'd.)

Art Small, Dickinson Law Firm, representing Keith Myers, Inc., a swine dealer, agreed with the interpretation of the legislative intent. He said the practice of most dealers was to omit ear tags because they add stress to the swine. Small added that existing recordkeeping and identification of the herd were adequate to allow tracing infected pigs to their source.

Motion to Refer

Priebe moved that proposed subrule 64.154(4) be referred to the Speaker of the House and President of the Senate for referral to the appropriate committees for review. Motion carried.

RACING AND GAMING

Mick Lura and Charles Patton presented the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Greyhound and thoroughbred racing, excursion boat gambling, audit and cash control procedures, 1.1, 4.1, 4.3, 4.3"2," "6," "7," "8," 4.4, 4.6, 4.14, 4.15(4), 7.3(19)"a," 7.3(19)"e," 7.3(21)"a," 8.2(4)"m"(13), 10.2(6), 10.2(6)"b"(4), 10.2(7)"a," 10.3(25), 10.3(26), chs 18 and 19, 20.10(4), 20.10(5)"a" and "i," 20.16, 21.11(1), 21.11(2), 21.12, 22.10(2), 22.10(5), 22.13(1)"c," 22.14(1), 22.14(2), 22.14(3)"d," 22.14(7), 22.14(7)"h"(2), (5) and (7) to (10), 22.18, 22.22(3), 24.14(1), 24.14(2), 24.14(9)"b," 24.24(1), 24.24(6), 24.26(2), 24.26(3), 24.26(4)"a," 24.26(5)"a" to "k," 24.26(6)"c," 24.26(7), 24.29(8)"a"(3), 24.29(8)"b"(4), 24.30(1), 24.31(2), 24.31(3), 24.31(8)"a," 25.14(4), 25.16(1)"d," 25.16(2), 25.18(4), 25.20(3), 26.17(3), 26.18, Filed ARC 2657A 12/25/91

1.1 et al.

Lura informed the Committee that the amendments incorporated legislative changes that were inadvertently overlooked, made adjustments in administrative procedure used for occupational licensing, made technical changes for conducting hearings, and modified internal controls for excursion gambling boats. There were two policy changes: One allows a cap on the tri-super wager and the other addresses scheduling of the excursion boats.

Patton explained to Priebe that 4.3, paragraph "2," was amended to increase from 3 to 7 the number of days allowed for the board to schedule meetings. It was difficult to meet the 3-day requirement. Priebe observed that suspension up to one calendar year was a major change in rule 4.4. Lura commented that the change was aimed at gaming because they operate all year. The rule had not generated any concern and was not discussed at the open Commission meeting.

Regarding 4.14, Patten advised Doyle they were trying to allow more flexibility regarding time of hearing. He was not aware of a case where continuance was denied for any reason.

ALCOHOLIC BEVERAGES DIVISION

Richard Morrell and Janet Bryant-Galloway represented the Division for the following agenda:

ALCOHOLIC BEVERAGES DIVISION[185]
COMMERCE DEPARTMENT[181]"umbrella"
Trade practices, 16.1(7), 16.1(8), 16.5(2) to 16.5(4), 16.13, 16.20, Notice ARC 2581A 12/11/91

Ch 16

Morrell briefed the Committee on the proposed amendments to Chapter 16 which had been reviewed with the industry and represented many years of work. One area of disagreement with one segment of the industry involved advertising, primarily, in ballparks, such as spectacular signs; other billboards at race tracks; and gifts of consumer-type items to retailers and customers—16.5(2). According to Morrell, the Division adopted the federal position that the advertising can be done as long as there is no evidence of collusion between the retailer and the wholesaler.

ALCOHOLIC BEV. DIVISION (Cont'd.)

Schrader asked if a race track or ballpark could comply with this subrule if they followed a bidding process. Morrell indicated that a licensee has the authority to handle any brand of their choice. However, there should be no gift involved. He replied to Schrader that a spectacular sign in a ballpark was not unlawful. A third party (not the brewery) owns that sign and would sell advertising on it but the ballpark would not receive revenue from it. A menu sign differs from a spectacular sign in that the menu sign advertises all brands of beer or liquor and no particular company receives free advertising. A menu sign is considered a fixture. Bryan-Galloway interjected that the definition of a fixture was included in the major body of the trade practices regulations and did include light fixtures specifically.

Schrader and Bryan-Galloway discussed the prohibition on pool table lights with beer advertising on them. This law has been in effect for many years.

Morrell stressed that intent of these rules was to keep the "playing field" level for the small business operators at the retail level as well as for the wholesalers and manufacturers.

Helen Larson, Executive Director, Beer Wholesalers Association echoed Morrell's statement that the rules represent several years of work. She referred to 16.5(2), on advertising restrictions and contended that it would not allow the wholesaler a level playing field. Her Association viewed it as a threat to the three-tier system allowing wholesalers to subsidize retailers which would be devastating to their industry.

Priebe suggested possible referral of the Notice to the Legislature but no formal action was taken.

EDUCATION

Representing the Department were Don Helvick, Edward Ranney and Robert Roush, Consultants and Teri Nordgaard, Legal Assistant. Also present were Mary Gannon, Iowa Association of School Boards. The following rules were before the Committee:

EDUCATION DEPARTMENT[281]

Open enrollment, 17.3(1), 17.3(2), 17.4(5), 17.8(2)"e" to "i," 17.9(1), Filed ARC 2619A 12/11/91

Postsecondary enrollment options, 22.2, 22.4, 22.5, Filed ARC 2618A 12/11/91

Driver education, 26.1, 26.1(1), 26.1(3), 26.2(1), 26.2(2)"h" to "j," 26.7, Filed ARC 2617A 12/11/91

Extracurricular athletic activity conferences for public school districts and accredited nonpublic schools, ch 37, Filed ARC 2616A 12/11/91

Ch 17

In review of amendments to Chapter 17 regarding open enrollment, Helvick agreed to work with a superintendent in Tieden's district on interpretation of the rules.

Kibbie inquired as to the recourse for the parents of a special education student if they believe the receiving district does not offer the appropriate program for this student. Hervick said that disputes of this nature were resolved by the AEA of the receiving district. Parents may appeal the findings within 30 days.

Helvick discussed busing of students in open enrollment as it relates to the sending and receiving districts—17.9(1). Although the rules were being broadened, costs would not increase because the rules would apply only for buses already operating in the district.

Hevick informed Hedge of a school board's right to appeal to the Department of Education.

EDUCATION (Cont'd

Schrader wondered if new language at the end of 17.9(1) would force a district to use their buses and was informed this would not happen. No Committee action.

Ch 22

When summarizing the amendments to Chapter 22, Ranney advised Tieden that correspondence courses were eligible offerings.

At Hedge's request, Ranney explained the paragraph why a pupil at a nonpublic school was counted as a shared-time student in the school district where the higher education facility was located—22.5 implementing Code chapter 261C.

Examples of application of the rule in various school districts were discussed.

Ch 26

Roush offered a brief explanation of the driver education rules in ARC 2617A. No questions.

Ch 37

Nordgaard presented amendments to Chapter 37 regarding extracurricular athletic activity conferences for public school districts and accredited nonpublic schools. Tieden questioned rationale for these rules when only a couple large schools in the state were having difficulty with their conferences. Nordgaard will pass on to Cathy Collins (and the Department) his concerns.

Priebe said, in defense of the rule, that smaller schools may be at a disadvantage with some schools in the conferences.

In response to Maulsby, Nordgaard said the Association implements the rules and they are appealable to the Department of Education. Maulsby alluded to the discrepancies in the weight classes at a wrestling meet he attended recently and felt this should not be allowed to happen.

Motion to Object Failed

Tieden moved to object to Chapter 37. Teaford and Schrader spoke in support of the rule. Priebe and Hedge favored objection. The motion failed.

UST BOARD

Robert Hubbard, Administrator, and Robert Galbraith, Assistant Attorney General, presented the following agenda:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Uniform rules, determination or adjustment of cost factor, appeals, chs 1 to 5, 5.2, ch 17, Notices ARC 9992, ARC 866A, ARC 1562A Terminated ARC 2632A 12/25/91
Cost factor, 5.2, Filed ARC 2635A 12/25/91
Administration of the environmental protection charge imposed upon petroleum diminution, 6.1, 6.8, Filed ARC 2636A 12/25/91
Eligibility, 10.1(1), 10.1(3), 10.1(4), Filed ARC 2637A 12/25/91
Remedial or insurance claims, 11.1(3)"d," Filed ARC 2638A 12/25/91
Underground storage tank system upgrades and replacements, 11.4, Notice ARC 2352A Terminated ARC 2634A 12/25/91
Environmental damage offset, 11.5, Filed ARC 2639A 12/25/91
Soil remediation payments, 11.6, Filed ARC 2640A 12/25/91

There was brief discussion of the agenda but no recommendations were made.

ENVIRONMENTAL PROTECTION COMMISSION

David Wornson, Attorney, Keith Bridson, UST Supervisor, Michael Murphy, LSB Chief, and Darrell McAllister, SGW Chief, represented the Commission for the following:

ENVIRONMENTAL PROTECTION COMMISSION

ENVIRONMENTAL PROTECTION COMMISSIION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
NPDES permits, 60.1, 60.2, 60.3(2), 60.4(2)"b," 64.1(4), 64.2(8)"a," 64.3(1)"f," 64.3(1)"h"(4), 64.3(4), 64.3(5), 64.3(7), 64.3(8)"e," 64.3(11), 64.4 to 64.18, Notice ARC 2608A 12/11/91
Financial responsibility for underground storage tanks, 136.2(4), 136.2(5), Notice ARC 2607A 12/11/91

Also present was James Boudouris, Geologist, Seneca Environmental Services.

60.1 et al.

Murphy explained amendments to 60.1 et al. which will implement the federal wastewater discharge program dealing with stormwater. McAllister recalled about 50 people attended a hearing and most of the concerns revolved around the construction aspect and the time frame for submitting operation permit applications—64.3(4). No recommendations.

136.2

Wornson gave a brief overview of ARC 2607A regarding financial responsibility for underground storage tanks. He commented that federal regulations had not been promulgated but that would not affect the October 26, 1991 date in 136.2(4). No Committee action.

Special Review Ch 134

Chairman Priebe announced special review of 567–Chapter 134 relating to registration of groundwater professionals. He recognized James Boudouris who referenced a letter to Royce wherein Bourdouris sought clarification of a requirement for registration as a groundwater professional. Boudouris voiced opposition to the December 1, 1991, deadline for submitting application and the $200 nonrefundable registration fee. He recalled paying only $20 to become an asbestos inspector.

Wornson responded that the rules had been published as Notice at the time they were adopted under emergency provisions in September. He advised that as a result of comments at the hearing, the rule will be revised and presented to the EPC in February. Wornson defended the $200 registration fee for a 2-year period as ensuring a self-supporting program. He maintained that the fee was comparable with other licensing board fees.

Priebe asked if the Department planned to address the nonrefundable status. Wornson rationalized that costs were no different to process or deny application. He stressed that the rules were needed to qualify as a groundwater professional but anyone questioning these qualifications should contact the Department and talk to them informally before submitting application with the $200 fee.

Maulsby reasoned that a portion of the fee should be refunded to those who fail to qualify since it covers a 2-year period.

Hedge pointed out persons failing the driver license exam do not pay a fee.

Kibbie inquired about the number of groundwater professionals and if more were needed. Wornson said there were approximately 220 registered.

Bridson was not aware of any denial of a license.

Wornson clarified that the five years' related experience criteria applies only to individuals who have had that experience as of June 10, 1991. It is expected to be a one-time issue—a grandfathering clause.

Schrader wondered if "nonrefundable" could be removed from the rule. Wornson said there may be situations that cannot be resolved and parties have the right to

EPC - Special Review (Cont'd.)

appeal through a contested case decision. The nonrefundability was set to cover costs that might be incurred due to a legitimate contest. Bridson added that it could deter frivolous applications as well.

Priebe agreed with Pavich that the Committee was very receptive to fees which can be justified. Schrader favored higher fees over nonrefundable amounts. No formal action.

Recess

Chairman Priebe recessed the Committee for lunch and reconvened it at 1:30 p.m. Hedge excused to attend another meeting.

Objections Committee Policy

There was discussion of the need for a written procedure regarding disposition of objections to rules after the Department has made subsequent amendments. Policy has been for the IAC Editor to remove an objection after the rule is amended. The ARRC would then review the revised language and possibly reimpose another objection or find the revision acceptable.

Amendment draft

Barry cited an example of Racing and Gaming rule 4.27(99D) which will be before the Committee February 3. Schrader contended that removal of an objection should be contingent on unanimous consent of the ARRC. He favored a majority vote to reverse a Committee action. Priebe suggested an amendment to the Committee's Rules of Procedure to be drafted by the Staff.

Flow Chart

Metcalf suggested a Flow Chart showing all Committee actions and the status of these actions. Barry stated that she maintains a file of all formal objections which have been imposed by the Committee. A separate listing contains those which have not been overcome, some dating to 1979. It was agreed that the ARRC should review these objections at a subsequent meeting.

COLLEGE STUDENT AID

The Commission was represented by Laurie Wolf, Director of Administrative Support, who presented the following agenda with no ARRC recommendations:

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"

Organization and operation, 1.2(3)"a" and "d," Notice **ARC 2598A** 12/11/91
Stafford loans — electronic disbursement, 10.17(4), Filed **ARC 2594A** 12/11/91
Stafford loans — guarantee fee, 10.24, Filed Emergency After Notice **ARC 2592A** 12/11/91
Stafford loans — sale or transfer of loans, 10.39, Notice **ARC 2593A** 12/11/91
PLUS/SLS loans — guarantee fee, 10.62, Filed Emergency After Notice **ARC 2595A** 12/11/91

ELDER AFFAIRS DEPARTMENT

In attendance from the Department were David Ancell, Administrator, and Jeffrey Batz, Accountant, for the following:

ELDER AFFAIRS DEPARTMENT[321]

Fiscal policy, 1.7, 5.1(2), 5.1(4)"a" to "d" and "g" to "m," 5.2(1)"c" and "d," 5.2(2), 5.2(3), 5.3(3)"c" to "e," 5.5, 5.6(1), 5.6(2), 5.7(1), 5.8(1), 5.8(2), 5.9, 5.10, 5.12(1), 5.12(2), 5.13, 5.14(11)"a" and "b," 5.15(1), 5.16(1), 5.16(3), Filed **ARC 2653A** 12/25/91
Retired senior volunteer program(RSVP), 14.1, 14.2, 14.4, 14.5, Filed **ARC 2652A** 12/25/91
Older Iowans legislature, 20.2, Notice **ARC 2625A** 12/11/91

Chs 1, 5

Amendments relating to fiscal policy in Chapters 1 and 5 were discussed. Under definition of "local match," Priebe questioned ". . . representing that portion of the costs of a grant-supported project or program not borne by the department." Batz responded that local match would be that portion of expenditures not awarded or supplied by the Department of Elder Affairs.

ELDER AFFAIRS (Cont'd.)

There were no recommendations for Chapter 14.

20.2

Priebe questioned the need for rule 20.2 since there was no funding for the Older Iowans Legislature. Ancell indicated that the Department was seeking grants through a foundation but he was willing to report Priebe's concern. Metcalf interpreted the rule as reassurance that the concept of OIL was endorsed. No formal action.

CORRECTIONS
Special Review
20.3

Fred Scaletta and Harry Cannon appeared before the Committee to respond to a petition by Betty Jean Clark for an amendment to 201—20.3(1)"d." Clark was requesting amendment to provide that an individual may be on the approved visiting list of more than one inmate unless the warden or superintendent of the institution has good cause to deny approval. Currently, visits are restricted to one inmate at a time unless approved by the warden or superintendent. According to Scaletta, exceptions are usually made for visits of more than one inmate by an immediate family member.

Royce relayed Clark's arguments which were based mainly on the Criminal Justice Ministries, a lobbying group on behalf of inmates. The group takes the position that by allowing multiple visitors, ties back home in the community would be rebuilt.

Scaletta spoke of security problems created by unstructured visits. He pointed out that as a result of a recent court decision, two inmates are not allowed to correspond with each other. Scaletta stated that religious and community leaders and certain other groups may visit more than one inmate at a time. Although the proposed revision would not prevent the Department from denying a visit, Scaletta suspected it would be more difficult to justify denial.

Pavich wondered about policies of other states and Scaletta agreed to research the issue and report his finding to Royce.

REGENTS - PURCHASING
Special Review

Wayne Ritchey, Executive Secretary, Betty Volm and Carson Smith were present from the Board of Regents for special review of purchasing policies by Regents institutions. The review had been requested by Kibbie. Also present were: Harry Cannon, Department Director, Iowa Prison Industries(IPI); Dennis Gritsch, Associate Director of Purchasing and Richard Gibson, Director of Planning and Adminstration, University of Iowa; Douglas Jensen, Adminstration and Finance, UNI; Arlo Meyer, Purchasing Manager, and Carol McDonalds Bradley, ISU.

Kibbie referred to a letter he had received from Janice Greig, Estherville, who serves on the Prison Industries Advisory Committee in the Corrections Department. Greig had sent a packet of information relating to furniture bidding by subdivisions of state government and private colleges as well. She was concerned that governmental agencies were not doing business with IPI. Kibbie thought the issue should be reviewed and although Regents was targeted to question in this case, it could be broadened to other departments as well.

Cannon spoke of the importance of more sales for the survival of Prison Industries. He continued that historically, Regents, the largest purchasing authority in the state, do not purchase IPI products. In fiscal year 1991 their total purchases amounted to $88,824 which constituted 1.1 percent of Prison Industries total business. Cannon quoted percentages and dollar amounts of business from other state agencies which far exceeded Regents purchases. He pointed out that Code of Iowa makes IPI a favored vendor under certain circumstances and a vital interest of the state is served when vocational-technical training is provided to inmates. Cannot noted that IPI has

REGENTS
Special Review
(Cont'd.)

the largest rehabilitative program in Iowa's prisons—averaging 490,000 hours per year. IPI funds all of the costs of its activities out of the profit generated from sales. In Iowa, as well as 43 other states, IPI is prohibited from selling to anyone other than the state and its political subdivisions so their market is very limited. Cannon declared that it was critical that IPI products be purchased by the state universities. He said that IPI was immediately faced with the prospect of producing more orders or closing shops and returning inmates to the general population and laying off staff.

Iowa Prison Industries has long waiting lists in all 14 shops of inmates who have applied to work which IPI cannot accommodate.

Cannon stated that Ritchey had committed the central office to purchase from IPI but he suspected these commitments had not filtered down to the universities where purchasing decisions were made. Cannon was of the opinion that universities follow vague and arbitrary standards which exclude IPI from consideration and offered examples.

Ritchey addressed the Committee and stated that IPI had commitment to their program from him and the Board as well. He spoke of dramatic changes during the last few months in terms of the institutions' attempts to utilize more effectively products of IPI. In specific projects, consideration is also given to Iowa small businesses. Ritchey pointed out that some products from IPI have been highly unsatisfactory. However, he was confident that given time and effort, IPI will make their lines more attractive and more competitive generally. He considered "cooperative planning" to be the key words.

Kibbie noted that Regents have named the manufacturer in some of their purchasing requests and he questioned how this practice could comply with the bidding process provided in the rules.

Ritchey explained that the Board wants effective competition but given standard of quality for all bidders to bid upon—a specified product or equivalent is required from time to time.

Representatives of the three universities also responded to Kibbie's inquiry.

Ritchey reiterated his goal to work with all concerned and he requested details on complaints from IPI so that the Regents are sensitized to their needs.

There was discussion of the fact that quality control problems experienced by IPI in the 70's and early 80's had been resolved.

In response to Metcalf, Ritchey said that by statute they are committed to ten percent for targeted small businesses with women and minorities.

Ritchey was amenable to Priebe's suggestion that he return to the Committee in June with a list of comparison purchases for 1991 and 1992. Ritchey also offered to report on their joint planning and efforts for the future. Tieden interjected that the Committee should recognize fluctuations in Regents needs and demands.

Tieden questioned Cannon as to the procedure followed to ensure quality control. Cannon offered detailed information on his background which included a Ph.D. in business administration and experience in studying and teaching quality control. He owned and operated a successful business and he enumerated procedures which he had implemented. No formal action.

NURSING BOARD - Special Review

Lorinda Inman, Executive Secretary, Board of Nursing; Marjorie M. Maxzen, Board Chair; and Eileen Gloor, Associate Director, Nursing Education were present for review of the study of practitioner licensing standards for instructional personnel at community colleges, 655—Chapter 2. The community colleges were represented by Lois Heskett, Barbara Crittenden, Don Kerr, Gary Daniels and David Palmer. Orrin Nearhoof was present from the Department of Education.

2.3(2), 2.6(2)

The study was mandated by the 1990 General Assembly in Senate File 2410 [Ch 1253, §119] and was conducted by the Board of Educational Examiners in cooperation with the Department of Education and community college trustees. Rules 2.3(2) and 2.6(2) adopted by the Nursing Board in 1989 significantly increased education requirements for administrators and instructors in community college nursing programs. After September 1, 1997, all faculty and heads would be required to hold a masters or doctoral degree in nursing. The rule was delayed into the General Assembly, which resulted in Senate File 2410.

Chairman Priebe recognized Inman who deferred to Nearhoof.

Pavich took the Chair.

Nearhoof stated the Board of Educational Examiners had completed its study on the rules and copies were sent to the ARRC along with recommendations from the Board.

With respect to nursing instructors, the Board plans to retain their rules for the licensure of nurses to teach in the community colleges. They recommended that the Board of Nursing change the time lines for the implementation of their rules by moving dates back three years. This three-year period would provide additional time for the development of expanded options and alternatives, opportunity for recruitment of personnel to meet the new standards and for others in degree programs to complete studies on a timely basis. The Board of Nursing would continue to use its waiver requirements with the community college programs.

Nearhoof continued that Drake University offers a master's degree program and it was recommended that the Board of Nursing and the Board of Educational Examiners cooperate in an attempt to work with the other institutions in designing some programs specifically for community college personnel and nursing.

Tieden was interested in reaction of the community colleges on these recommendations. Nearhoof responded that when community college personnel appeared before the Board, they maintained that the rules as currently adopted would create some hardship for them in the employment of personnel to meet the master's degree requirement. He noted there were 29 programs in the state to prepare nurses who would be subject to these rules—15 were community colleges. Nearhoof pointed out he had been involved with licensing of teachers and administrators for 26 years and has learned to deal with changing time lines sometimes because of supply and demand. This was the basis for the recommendation for the three-year additional delay in the rules.

Priebe resumed the Chair.

Lois Heskett, representing Iowa Lakes Community College, stated that as department head of health she was responsible for the nursing program. According to Heskett 10 to 15 percent of the 65,000 population of Area III were 65 or older creating a great demand for nursing services. The college supplies 90 to 95 percent of the nurses who work in Area III. The average age of the nursing student is

NURSING BOARD - Special Review (Cont'd.)

between 25 and 30 and approximately 60 percent of the graduates remain in the area.

Heskett continued, as quoted in the study, community colleges were doing a satisfactory job. They have a passing rate of 90 to 100 percent on state board examinations and employers are satisfied with the graduates. She added that their purpose was to educate entry level registered nurse practitioners. Their program direction is established by an advisory board of local citizens and employers as mandated by law. Heskett reviewed requirements for licensure by the Department of Education. She stressed the difficulty for rural Iowa to attract a master's prepared nursing instructor. Heskett cited a major problem as lack of access to a master's program—the closest one being three hours away from her area. She suggested combining the 18 credits required for educational licensure into a master's for nursing to meet the requirements for teaching.

Barbara Crittenden, Southwestern Community College, told the Committee that they serve eight counties and typically graduate 40 RNs and 35 plus LPNs each year. They also have a passing rate on licensure examination of 90 to 100 percent, with an employment rate of about 100 percent.

Crittenden did not believe that lack of a master's in nursing had affected the quality of nursing education. They had advertised without success to hire master's prepared instructors. She cited budgetary matters as another obstacle in attracting master's prepared persons.

Crittenden urged the 3-year extension if the change is mandated. She took the position that advanced degrees should be allowed in related fields and not limited to nursing. Crittenden stressed they were not opposed to advanced degrees nor to advancing education but wanted to be realistic. She favored a grandfather provision for current faculty.

Priebe recalled these arguments when the rules were before the Committee.

Tieden had heard no complaints about the inadequacy of teachers and he was concerned that more stringent requirements aggravate the nursing shortage in Iowa.

Schrader was inclined to agree with the report. The fact that the passing rate of graduates varied little regardless of educational background of the instructors said much for the programs across the board, in his opinion.

motion to Refer

Schrader thought the Committee should take some action. He recommended referral of the Nursing Board rules [2.3(2)d(2) and 2.6(1)a(1)"1"] and a copy of the study to the Speaker of the House and President of the Senate, with prejudice, for referral to the appropriate committees. The referral should include a recommendation that the Committee was generally supportive of the study submitted to the Board of Educational Examiners in July of 1991. He further recommended that the committees revisit this issue and ask the "players in the administrative rules area to work on a compromise." Schrader then moved his comments with the suggestion that this Committee is supportive of this study.

Discussion followed. Schrader asked that this issue be placed on the February agenda of the ARRC in order to consider a rules nullification motion if the legislative committees have taken no action.

Kibbie concurred with Schrader's motion. He then commented, on Hedge's behalf, who shared concerns expressed by Heskett and Crittenden. As a member of a

NURSING (Cont'd.)	community college board for many years, Kibbie understood the difficulty in finding nursing instructors. He reasoned that the rules should not be implemented at this time.
Motion	Maxzen, also a director of a school, commented that 75 percent of her students were "nontraditional" and also has 100 percent pass rate. She defended the rules as keeping in line with the complexity of health care. Maxzen took the position that Iowans deserve the availability of highly educated faculty members teaching. She added that the Board has granted waivers to those requesting them and they anticipate this practice will continue. The Board wants to move forward in requiring that faculty be properly qualified as they are in every other profession.
	Inman stated that the Board of Nursing has taken no action on the recommendations of the Board of Educational Examiners study since they have not met since it was received. She recalled that development of the rules began in the '70s and in the early '80s the Board adopted a rule which "recommended" a baccalaureate degree but unfortunately never attempted to enforce it.
Motion Carried	The Schrader motion was restated for Hedge who returned to the meeting. "Nursing Board rules 2.3(2) and 2.6(2) would be referred to the legislature." Motion carried with one dissenting vote.
Committee Business - Human Services Copayment	Barry informed the Committee that the Attorney General's office had voiced opposition to the format followed in reprinting IAC pages for Human Services subrule 79.1(13) following expiration of the version in place when objection was voted July 12, 1991. She distributed two versions of the pages for Committee's perusal before Human Services rules were reviewed on Tuesday.
Council of State Government	Priebe then recognized Representative John Connors, Chairman of the Council of State Governments. He explained Council functions and informed the Committee that the annual meeting of the National Council would be held in Des Moines in December 1992. It was Connors understanding that the ARRC was interested in becoming an adjunct organization and he urged them to become a part of the Council of State Governments. He advised that the Chairman of the ARRC should send a letter to Connors as Chairman of the Council expressing a desire to become an adjunct organization. Conners would refer the letter to the Executive Committee at its January 18 meeting in Lexington, Kentucky.
	Priebe commented that this was a follow-up from the Omaha meeting last July and he stressed the importance of the ARRC involvement in the Council.
Motion	Kibbie moved that the Committee proceed with becoming an adjunct organization of the Council on State Governments. Motion carried.
Minutes	Metcalf moved to approve the minutes of the December meeting as submitted. Motion carried.
Recess	Committee was recessed at 3:35 p.m.

Reconvened

Chairman Priebe convened the meeting on Tuesday, January 7, 1992 at 8:30 a.m. All members and Staff were present.

Targeted Small Business - Special Review

Chairman Priebe announced a special review of Targeted Small Business practices.

Present from the Department of Economic Development were Muhammad Abdullah, TSB Manager, and Melanie Johnson, General Counsel. Also present: Lawrence T. Bryant, Compliance Manager, Department of Management; Sherry Hopkins, Division Administrator, Department of Inspections and Appeals; Janis Curtis, TSB Officer; Mary Gannon and Jay Horstman, Iowa Association of School Boards.

Abdullah stated that rules in 261—Chapter 54 addressed the Targeted Small Business Procurement Program but the Department was now in the process of updating them. He anticipated a February review by their Board followed by a hearing. Revisions will implement 1991 legislation which included school districts, AEAs and community colleges under the TSB program. Abdullah continued that during the last 90 days they had worked with the Department of Education and school districts on how to identify TSBs in their areas. They also held 12 opportunity fairs around the state.

Priebe had been contacted by two of his school districts which were experiencing problems in meeting the proposed guidelines because of only a few TSBs in the area. They also complained about the extra paperwork.

Kibbie had received similar complaints and he wondered what changes would occur under any new rules.

Abdullah was aware that many districts lack certified TSBs and that it would take time to reach the ten percent goal. He said this program was designed to help encourage and promote minority and women businesses and it has worked. Businesses are now on line in competition and adding to the state's economy.

In response to Kibbie's question as to what is required of a school superintendent to comply with the state law, Abdullah stated if there were no TSBs in their area and no procurement outside of their area, the school should notify the Department. This problem will be taken into consideration when the Department's report is made to the legislature. If a district is going outside of their area to do business, then TSBs should be notified for an opportunity to bid.

Priebe declared there was not a school district in the state that was not doing business outside of their area. Abdullah reiterated that districts that go outside of their area should include TSBs in the solicitation for bids.

Pavich brought up possible problems in border towns but Abdullah said the program was limited to Iowa TSBs.

Tieden and Abdullah discussed the competitive bidding process.

Kibbie read from Code section 73.16, last paragraph, and Abdullah clarified this was a ten percent goal, not a setaside. Bryant added that DED can provide assistance to the entities that establish that goal. Tieden was hopeful revised rules would be very definitive in this area.

Schrader referred to a reporting document from one of his school districts which expressed frustration with the program. He noted that on the other side

TSB - Special Review (Cont'd.)

Representative Baker was concerned about the implications of the program by a minority enterprise TSB. Groups at both ends of the spectrum were angry and "do not understand what is happening in the middle." Abdullah explained object code numbers on the reporting form which had been developed with the Department of Education. He suspected that districts were overreacting at this point but was convinced that women in business would soon be able to supply the districts with goods and services—a national trend. Abdullah said there were 919 certified TSBs.

Abdullah summarized that districts are asked to anticipate their TSB expenditures; follow up at the end of the year with actual numbers; and supply a list of vendors from the previous quarter from the year before.

Metcalf asked about any onerous barriers in the list of qualifications for a TSB to become certified and Abdullah knew of none. He added that the qualifications would protect the integrity of the program. Metcalf suspected unclear communications as to competitive bidding. Abdullah responded to Metcalf that this law has been in effect for only six months. Bryant thought any confusion could be between the state's Targeted Small Business Program and DOT's federally mandated DBE program.

In response to Maulsby, Abdullah informed him that the Department has the responsibility of identifying qualified TSBs but they do not qualify them.

Priebe recognized Gannon, who distributed to the Committee a copy of the IASB Policy Primer—an analysis of the law, and an attached sample policy which the school district then adopts so that they have a policy on the books that complies with the law.

Gannon raised concerns with the law in effect since 1990. First was the lack of rules—there was no requirement for filing rules until 1991. They have urged DED to furnish rules and guidelines to the school districts.

Secondly, as addressed by Senator Kibbie, there are few vendors for the school districts.

A third concern was with school budgets—approximately 80 percent goes for salaries and benefits and 10 percent is for special education tuition. Of the remaining 10 percent, a large portion is spent for textbooks which are purchased from three to four major publishers in the country. Gannont emphasized that TSBs were not involved in the textbook industry. Educational consultants may or may not be TSBs.

Gannon took exception to Abdullah's remarks about paperwork for school districts. She pointed out that according to the law, each time the district wants to make a purchase for which a TSB would be eligible to bid, the district must file a report with the Department of Education, where it is referred to the DED for determination as to which TSB may be eligible to bid on that project.

In conclusion, Gannon recalled when the bill was drafted and adopted it was intended to apply to state agencies. She spoke of vast differences between local governmental and state agencies. Local budgets lack flexibility and all 425 school districts have different purchasing procedures.

Abdullah clarified that the object codes the Department of Education has given the school districts do not include salaries or any payments.

TSB - Special Review (Cont'd.)

Bryant reiterated that intent of the law was to extend opportunities wherever state funds were extended and especially to minorities and women in business.

Abdullah described the directory which identifies all TSBs and it is sent to all school districts and updated quarterly. He also reported on the on-line Bid Bulletin Board to list statewide bids. TSBs will be listed on the Board and updated on a monthly basis. Priebe asked about funding and Abdullah said the program was worked out through Iowa State University with a grant from the Department of Commerce.

Priebe suggested a meeting between the department and school boards and other interested people when the rules were rewritten. He stressed that rules must implement the statute, not individual preferences.

There was lengthy discussion on the specifics of the Code and the direction given therein.

Kibbie suggested that the Small Business and Economic Development Committee review the issue with those who work with this program.

Bryant commented that the Department of Management has responsibility for oversight of the TSB program and coordinating group meetings are held monthly.

Priebe was of the opinion that excessive paperwork created a burden.

Schrader was concerned with delay in the rule-making process and he questioned the charge of $50 for a TSB Directory. Abdullah stated that the Department's request for funds for the Directory was denied so their alternative was to ask school districts to share the cost.

Priebe announced that the Transportation Department and Utilities Division would be rescheduled for the afternoon.

HUMAN SERVICES

Present from the Department were Mary Ann Walker, Mike Murphy, Cynthia Tracy, Mohammed Amied, Sally Nadolsky, Andrea Philip, David Perret, Dan McKeever, Margaret Corkery, Joe Sheeley and Paul Rode. The following agenda was presented:

HUMAN SERVICES DEPARTMENT[441]

Conciliation procedures, 41.4(7)"a"(1) to (3), Filed ARC 2597A 12/11/91

Iowa's self-employed household incentive program, ch 48 title, preamble, 48.1 to 48.3, Notice ARC 2579A, also Filed Emergency ARC 2578A 12/11/91

Conditional Medicaid and State Supplementary Assistance benefits, 50.5, 51.6, 51.9(2), 76.2(3), Notice ARC 2631A 12/25/91

Early and periodic screening, diagnosis, and treatment, 84.1, 84.3, 84.4(1), Filed ARC 2575A 12/11/91

PROMISE JOBS program — priority of service, 93.5, Filed ARC 2576A 12/11/91

Reserve bed payment for group foster care, family foster home care, and shelter care, 156.9(2), 156.10, Filed ARC 2580A 12/11/91

Adoption opportunity grant program, ch 160, Notice ARC 2583A, also Filed Emergency ARC 2582A 12/11/91

Juvenile community-based grants, rescind ch 166, Notice ARC 2603A 12/11/91

Extension of family-centered services, 182.4(2), Notice ARC 2604A 12/11/91

Family support subsidy program, 184.3(2), 184.6, 184.8(3), Filed ARC 2655A 12/25/91

Subsidized adoptions, 201.3(1)"g," 201.4(4), 201.5(7), 201.6(1)"a"(3) and (4), 201.6(1)"d," Filed ARC 2574A 12/11/91

Iowa adoption exchange, ch 203 preamble, 203.1 to 203.4, Filed ARC 2577A 12/11/91

HUMAN SERVICES (Cont'd.)

Walker briefed the Committee on ARCs 2597A, 2578A, 2631A and 2575A and there were no questions or recommendations.

93.5

In review of rule 93.5, Tieden inquired as to the success of the Promise Jobs program and McKeever responded that during the first year 4,200 people were employed and to date over 8,000 people have been employed with 80 percent staying off assistance.

No questions or comments on ARCS 2580A, 2582A, 2603A and 2604A.

184.3 et al.

Discussion of amendments to Chapter 184. No recommendations.

Ch 201

No comments or questions on amendments to Chapter 201.

Ch 203

Amendments to Chapter 203 requiring automation of the Iowa adoption exchange were discussed. Walker explained subsidized adoption as a program where adoptive parents of special needs children are granted financial and medical assistance. Corkery described special needs children are those with physical, mental, emotional or behavioral problems.

Metcalf was interested in disposition of the adoption exchange information once the child is matched or adopted. Corkery replied that once there is a match and the child starts visitation prior to placement, the Department places the information on hold so two or three other families are not linked with the same child. The child is taken off the exchange at that time a family decides to adopt. Corkery explained that the child must be legally available for adoption before being placed on the exchange so parental rights have been terminated—voluntarily or under Code chapter 232. Records are sealed after the child is adopted.

Copayment 79.1(13)

Royce then brought up copayment in 441–79.1(13) which was now subject to an injunction and had been ruled null and void by county district court. There was discussion of the unresolved problem regarding publication in the IAC. He referred to sample pages together with notes of explanation of the history of the rule making which were distributed by Barry at Monday's meeting. The Attorney General's office suggested underlining in the IAC to identify language subject to the court action with appropriate notes. Royce pointed out a flaw in this approach since the court does not identify language to strike—it strikes concepts. He reasoned that the notes were inadequate since they identified only the copayment services that the court was concerned about.

There was discussion of the disposition of the published objection to the emergency amendments to 79.1(13) which were published 3/20/91. The emergency version would cease to be effective 180 days after the objection was filed or on January 11, 1992. It was also noted that the subrule as published in 7/10/91 as ARC 2091A, Adopted andFiled, had been delayed until adjournment of the 1992 General Assembly.

At the September 10 meeting of the ARRC there was consensus that subrule 79.1(13) should be republished to reflect the version in place prior to the emergency amendments.

Schrader voiced opposition to editorializing in the IAC or reporting on court decisions.

Copayment(Cont.)
Motion

Schrader moved that the Committee not begin the practice of editorializing in the IAC relating to court proceedings.

Metcalf questioned the motion.

Schrader then asked for unanimous consent for the motion to be considered as a statement to be included in the minutes.

motion: Committee Rules of Procedure

Schrader then moved to amend the Committee's Rules of Procedure by including a statement that court decisions should not be referred to in the IAC.

Dierenfeld indicated that she and Royce had attempted to help Barry with the appropriate format of the IAC because of the court action. Dierenfeld's concern was the confusion of rules in the IAC that the agency was not currently enforcing but reasoned that it would be advisable to do nothing until the matter has been resolved by the courts.

Barry called attention to minutes of the 9/10/91 ARRC meeting where she was directed to republish the IAC pages (1/8/92) to reflect the language in place prior to the emergency amendments. It was her opinion that this directive should be rescinded and the subrule remain unchanged. Barry concluded that the old language was dead by virtue of the statute as of January 11. Researchers could trace amendments by following bracketed dates at the end of Chapter 78.

Walker clarified that their Assistant Attorney General was concerned about removal of the language objected to since it was also under Session Delay. Removing the language would be breaking precedent.

Royce commented that delayed portions of the language have been temporarily ruled null and void by the Polk County district court leaving question as to what is in effect right now. Normally, language is deleted only when the agency takes action to rescind it. With respect to 79.1(13), circumstance dictates enforcing a rule that was published January 1990. The rule that appears in the IAC bears only slight resemblance to the 1990 version which for all intensive purposes is now in effect. Royce conceded that the IAC Editor had never before added footnotes to a rule. However, he spoke of the difficulty of not knowing what portion of a major rule with complicated history is in effect. Notes were an attempt to at least alert the reader.

Metcalf pointed out that another legal track was minutes of the ARRC meetings. Barry interjected that this was her reason for wanting to address the directive of 9/10/91.

For clarification, Schrader restated his motion and said it was not intended to preclude an agency from adding notes on court cases.

Motion amended

Priebe moved to amend Schrader's motion by adding a sentence: "Decisions in court cases reflecting administrative rules shall not be expressed editorially in the Iowa Administrative Code or Iowa Administrative Bulletin. " Priebe's amendment to the motion passed.

Motion as amended passed

Schrader's motion as amended passed with one dissenting vote.

Motion

Barry asked if the motion made on 9-10-91 was void. Priebe moved that the Committee strike from the minutes of 9-10-91 the paragraph relative to Human

Copay (Cont'd)

Services subrule 79.1(13) on page 5021. Barry thought that only the last two sentences should be addressed. They read: "There was consensus by Bonfield and Committee members that subrule 79.1(13) should be republished to reflect the version in place prior to the emergency amendments. Barry agreed to publish the revised subrule in the 1/8/92 IAC Supplement."

Motion passed

Metcalf moved to amend the Priebe motion to provide that, in lieu of striking the sentences, the Committee action be rescinded. Motion carried unanimously.

INSPECTIONS AND APPEALS

Mary Oliver and Rebecca Walsh presented the following agenda:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Hospitals — psychiatric services, domestic abuse, child abuse and dependent adult abuse, 51.33, 51.37, 51.38, Notice ARC 2624A 12/11/91

Care facilities, 57.5(5), 57.14(7), 57.39(4), 58.4(6), 58.13(7), 58.43(9), 59.4(6), 59.9, 59.15(7), 59.48(9), 60.3(2)"f," 60.11(3)"e," 61.3(1)"e," 61.11(3)"c," 62.5(6), 62.17(2)"j," 62.23(23), 62.23(24), 63.4(5), 63.37(4), 64.4(5), 64.33, 65.5(4), 65.19(4), 65.25(3), 65.25(4), 65.29, Notice ARC 2623A 12/11/91

Intermediate care facilities for persons with mental illness (ICF/PMI), ch 65, Filed ARC 2602A 12/11/91

Ch 51, 57.5 et al.

Walsh presented ARC 2624A and 2623A with no questions or recommendations by the Committee.

Ch 65

Walsh briefed the members regarding Chapter 65.

Tieden quoted from the preamble and noted changes from the Notice were substantive with respect to the definition of chronic mental illness. Priebe asked if the Pharmacy people found the rules acceptable and Oliver responded in the affirmative. Priebe and Tieden urged agencies to avoid major changes from Notice without additional comment period.

Department officials recalled questions raised by the Committee at their December meeting with respect to the rules on business or activity in care facilities. They asked to address the concerns so the Board of Health could adopt the Notice tomorrow. It was agreed that Oliver would return at 1:30 p.m.

INSURANCE DIVISION

The Division was represented by JoAnne Page; Anu Vaitheswaran, Assistant Attorney General, Securities; and Craig A. Goettsch, Superintendent of Securities, for the following:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"

Investments in medium grade and lower grade obligations, 5.32, Filed ARC 2643A 12/25/91

Credit for reinsurance, 5.33, Filed ARC 2645A 12/25/91

Regulation of securities offerings and those who engage in the securities business, 50.15, 50.25(1) to 50.25(3), 50.36, 50.47 to 50.50, 50.54, Notice ARC 2621A 12/11/91

Brokerage services by national and state banks, credit unions, savings banks, and savings and loan institutions; broker-dealers having contracts with national and state banks, credit unions, savings banks, savings institutions, 50.81 to 50.84, Notice ARC 2644A 12/25/91

Filing requirements for agricultural cooperative associations, 50.85, Notice ARC 2641A 12/25/91

Ch 5

Page presented ARC 2643A and 2645A with no questions.

Ch 50

Goettsch briefed the members of amendments to rules 50.15 et al. Metcalf questioned whether 20 days allowed sufficient time for comment on the proposal.

INSURANCE (Cont'd.)

According to Goettsch, copies of the rules were provided to a list of interested people which included Securities Industries Association, some major brokerage firms and Securities Committee members of the Iowa State Bar Association. Two comments had been received—one on the shelf registration, a technical comment from A. G. Edwards out of St. Louis and another comment from a Des Moines law firm concerning the advertising rule and a criticism of the salary expenses rule.

50.81–50.84

Goettsch presented proposed new rules 50.81 to 50.84 relating to brokerage services. Metcalf referred to subrule 50.83(3) and suggested inclusion of the words "EARNINGS AND PROFITS' after the word "SECURITIES' in the fifth line to clarify that not only securities but the earnings and profits as well are not covered. Goettsch was willing to consider the suggestion.

50.85

In review of 50.85, Goettsch informed Priebe that they had no comments from the Institute of Coops. However they did work with them on legislation.

Maulsby recommended clarification in 50.85(1) as to who is the administrator. Goettsch stated that Code chapter 502 names the commissioner of insurance as administrator. The rule tracts statutory requirements. No Committee action.

LOTTERY

Nichola Schissel was in attendance to explain proposed Chapter 15, "Multi-State Lottery Game," as published in IAB 12/11/91 as ARC 2620A.

Schissel described the new game as representing substantial change involving 16 states which will result in a very high jackpot. Iowa Lotto game will continue to be offered. Priebe commented that people in his area would prefer smaller jackpots won more often.

Schrader referred to the definition of terminal in 15.2 and questioned whether there were plans for Nintendo games via TV. Schissel responded in the negative. Their three player-activitated terminals are attached to a clerk-activated terminal. No Committee action.

REVENUE AND FINANCE

The Department was represented by Carl Castelda and Melvin Hickman for the following agenda:

REVENUE AND FINANCE[701]

Interest rate for 1992, 10.2(11), Filed ARC 2630A 12/25/91

Administration of the environmental protection charge imposed upon petroleum diminution, ch 37, Filed ARC 2628A 12/25/91

Extension of time for filing returns — individual, corporate, franchise, and fiduciary, 39.2(3), 39.2(4), 48.9(3), 52.2(6), 58.2(5), 89.5(1)"c," Filed ARC 2629A 12/25/91

Interest exemption for securities of student loan marketing association and resolution trust corporation, 40.2, 53.5, Notice ARC 2599A 12/11/91

Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes, 40.15, Notice ARC 2600A 12/11/91

Withholding, 46.1(2), Filed ARC 2601A 12/11/91

10.2

Department officials pointed out that the Department is required to set the interest rate every year and it has to be at two percent above prime.

Ch 37

No questions or comments on ARC 2628A—Chapter 37.

REVENUE Cont'd.)

In consideration of amendments to 39.2 et al., Doyle and Castelda discussed the supreme court case on interest computation with respect to due date as far as statutes of limitations for auditing tax returns and filing refund claims.

No recommendations were made for the remaining rules.

PROFESSIONAL LICENSURE

The following agenda was before the Committee:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure of nursing home administrators — increase in fee for N.A.B. examination, 141.5(1), Notice ARC 2647A 12/25/91

Licensure of nursing home administrators, 141.6(2)"c" and "d," Notice ARC 2297A Terminated ARC 2648A 12/25/91

Podiatry examiners, 220.1(2)"d" to "f," 220.1(4), 220.4(3), Notice ARC 2649A 12/25/91

Podiatry examiners–settlement procedures, uniform rules, 220.204, chs 227, 228, Filed ARC 2612A . 12/11/91

Minimum training standards for podiatry assistants engaging in podiatric radiography, ch 221, Filed ARC 2613A 12/11/91

Respiratory care practitioners, 260.5(4), 260.7(4), 260.10(8), 260.13(2), 260.15(3) to 260.15(6), Filed ARC 2611A 12/11/91

Speech pathology and audiology examiners, 300.3(6), 300.7(1), 301.3(2)"b," 301.3(3), 301.9(2)"d," 301.9(3), 301.10, Filed ARC 2615A 12/11/91

Physician assistants, 325.4(1)"a"(4) and (5), 325.6(1)"t," "u," and "v," 325.6(2), 325.6(5)"b," 325.7, 325.8, 325.10(3)"a," Filed ARC 2614A 12/11/91

Present from the Division were Libby Coyte, Board of Physician Assistant Examiners, Susan Osmann, Kathy Williams, Harriet Miller, and Marilynn Ubaldo. Also present were Lloyd Jessen, Board of Pharmacy, Thomas Temple and Gary J. Salamido with the Iowa Pharmacists Association.

Osmann presented the first four items and there were no questions.

Ch 221

In ARC 2613A, Tieden wondered if there had been any concerns shown by professionals regarding podiatry assistants. Osmann stated the rules were reviewed by the Bureau of Radiological Health within the Department and the Podiatry Society. There were no problems.

No questions or comments on ARC 2611 and 2615A.

Ch 325

Coyte reviewed adopted amendments to Chapter 325 and reported that during the past nine months there was extensive review of the rules with a special committee from the Medical Board and the PA Board. Numerous comments were received from the Medical Board and the Pharmacy Board and extensive changes were made before the final rules were approved unanimously. Coyte added that some groups did not agree with the compromises, e.g., 325.6(1)t(4) and 325.6(2) mentioned in Royce's Rules of Interest.

Coyte pointed out that these provisions were direct quotes from the statute and were included mainly because they represent an essential part of the role of a physician assistant. She declared if a PA cannot have other people assist them in the office, the profession cannot function. The statutory language was repeated because of questions about the liability of other professionals following instructions of a PA. PA authority comes from the physician and the supervising physician. Coyte reported that the attorney for the PA and Nursing Boards, Marie McGuire, found the rules to be legal and within the Board authority. With respect to questions about the term "health care provider," Coyte said it was defined in the

PROFESSIONAL LICENSURE
Ch 325(cont'd.)

statute and generally says, "physicians, hospitals and others that provide health care." The Board believes that provision is critical and essential to the profession. Their ability to prescribe medication would be meaningless if no one would follow their instructions. Royce concurred that any problems that exist would be with the statute itself.

Metcalf suspected the Department had circumvented legislative intent for rules to explain the statute by merely repeating the law. According to Coyte, the Board took the position they lacked authority to elaborate on the definition of "nurse." They have asked the Nursing Board to define the term and it could be referenced in the PA rule.

Metcalf referred to 325.6(1)t(1) which stated that PAs could supply prescriptions under certain circumstances when "The best interest of the patient may include supplying medications at the request of the patient or a family member." Metcalf voiced opposition to addition of the words "or a family member" which she maintained was an expansion of the statute. Coyte responded there was a difference between "supply" and "prescribe." She explained the language was intended to address an incapacitated elderly person. Metcalf thought that should be so stated in the rule. Coyte clarified that the issue of who makes the medical decision for the patient was not dealt with in the rule. Instead the issue was whether someone could receive their five- or ten-day supply of medication at a clinic versus the local pharmacy. The only input from a family member would be where they would pick up the medication. Metcalf and Coyte discussed the meaning of prescribe and supply. Metcalf was concerned that a family member could ask a PA to prescribe a medication that a doctor had not approved.

In response to Schrader, Coyte stated that the law specifically allows for PAs to prescribe a medication. They can also supply a medication—count it out, bottle it, label and hand to the patient. Schrader was also curious as to why the statute was quoted verbatim in this case, but on the other hand they chose to expand by further defining the best interest of the patient. Schrader was concerned that this language would provide opportunity for a prescription to be dispensed without the patient having visited the PA. Coyte reiterated that this was a totally different issue and was not even addressed in this rule.

Thomas Temple, Director of the Pharmacists Association, stressed that they were not opposed to prescribing by PAs. However, he shared Committee concern regarding the words ". . .or at the request of a patient or a family member." He cited an example of a community clinic which would not allow a pharmacy in that community. The rule could provide ample opportunity for that clinic to circumvent the use of a pharmacist. Temple took the position that when pharmacists are reasonably available, that expertise should be used as a check and balance.

Temple expressed concern about the words "plus reasonable overhead which may include both direct and indirect costs" in 325.6(1)t(2). He recommended inclusion of "but not at a profit."

Temple referred to 325.6(1)v(2) and confusion as it relates to prescribed and controlled substances which are listed as stimulants or depressants. He spoke of specific prohibition in Senate File 42 against the prescribing of those substances which is reflected in the first sentence of (2), but in the second sentence, the physician assistant may order these substances with prior approval or direction of the physician. Temple questioned how a pharmacist would be sure there was prior authorization and thought the language was conflicting. With respect to v(7),

PROFESSIONAL LICENSURE

Ch 325 (Cont'd.)

Temple observed that it was statutory language but should include a statement that the Board of Pharmacy is responsible for the prescribing and distribution of controlled substances in this state. They are under contract with the Drug Enforcement Administration in Washington, D. C. and they have to have authority to not only license PAs if they prescribe and dispense or supply controlled substances, but they have to have jurisdiction. This fact had been pointed out during the legislative session where there "seemed to be more interest in trying to get specific language rather than trying to get meaningful legislation." Temple reminded that the PA Board shall by law consult with the Board of Pharmacy but, by and large, suggestions have been ignored.

Temple urged delay of these rules until compromise language could be worked out.

Coyte disagreed that the Pharmacy Board had been ignored. Many suggestions were incorporated into the rules. Regarding medication (Schedule II)—before PAs were able to prescribe medication they could order it on a direct order of a physician. Schedule II prescriptions must have the physician's written signature. All other prescriptions supplied by a PA will have only the PA's siguature making it easy for the pharmacist to tell whether it has prior approval and is a direct order from the physician.

Priebe reminded that this Committee has no power to change the statute.

Motion to Delay

Metcalf thought the Committee does have the ability to ask for further work on the rules and she moved to impose a 70-day delay on these rules and asked that the appropriate legislative committees review the issue again.

Kibbie commented that he would not support the motion to delay since most of the arguments have been discussed in the last two years. In his district there are 4 PAs in communities without pharmacists. He reasoned that time was needed to allow the program to work. He was convinced it would have close scrutiny.

Priebe noted that seven affirmative votes were necessary for a delay.

Teaford spoke in opposition to the delay also and echoed Kibbie's remarks.

Maulsby spoke against delay.

Metcalf amended her motion to refer the rules to the House and Senate.

Motion failed

Motion failed on a show of hands.

PUBLIC HEALTH

The Department was represented by Michael Guely, Margaret Bledsoe, Michael Magnant, William Permar, Gary Ireland, Cheryl Christie and Carolyn Adams. The following agenda was presented:

PUBLIC HEALTH DEPARTMENT[641]

Swimming pools and spas, ch 15, Notice ARC 2633A 12/25/91

Public health nursing, 79.4(2)"a," 79.4(5)"b," 79.5(4), 79.6, 79.8, Filed ARC 2586A 12/11/91

Basic emergency medical care, 131.1, 131.3(1), 131.4(1)"f," "r," and "s," 131.4(4)"b," 131.4(4)"c"(3), 131.4(9)"c," Filed ARC 2585A 12/11/91

Training and certification of and services performed by advanced emergency medical technicians and paramedics, ch 132 title, 132.1, 132.3(1)"e," 132.4(4)"b," 132.4(5)"h," 132.4(9)"c," 132.4(10), 132.5(5)"a," 132.5(11)"h,"132.9(6)"b"(1), 132.15, Notice ARC 2609A 12/11/91

White flashing light authorization, 133.1, 133.2(2), Filed ARC 2584A 12/11/91

PUBLIC HEALTH (Cont'd)

Magnant briefed the Committee on Chapter 15, "Swimming Pools and Spas," under Notice in ARC 2633A. He said these rules "fine tune" existing rules in effect since 1990. No controversy was anticipated so a hearing had not been scheduled.

Ch 15

Schrader spoke of his frustration of not knowing what changes were made since the rules had been rewritten. He recommended a more detailed preamble. Magnant explained that many rules were rewritten for clarity and a number of requirements were relaxed for the operators and owners and ease of inspection. To date, they have received one technical comment regarding drains in 15.4(5)h and 15.5(10). The comment was from a manufacturer of fiberglass grates who preferred retention of the straight velocity requirements for water through those grates.

Metcalf and Magnant discussed the location of emergency telephones in spas. The Department favored relatively vague language to encompass most situations.

Hedge echoed Schrader's comments and found it surprising that rules of such magnitude had generated little interest. He suspected the holiday rush was a contributing factor.

Magnant indicated that about 150 copies of the rules were distributed to interested groups at the time they were submitted for publication. Permar had talked with numerous pool officials and regulated agencies and comments from them were favorable. He reiterated that the revision was essentially for clarification.

Responding to Doyle, Magnant said their committee did include a representative of the insurance industry. He continued that the statute, as originally passed (135I), included two segments which provided a defense to tort action to those operators and to governmental agencies that had been inspected and signed off on by either the state or another agency, and also provided a defense to those local agencies that were enforcing this program. Magnant was unsure of the insurance status of private water slides.

Kibbie mentioned the problem of fees for small community pools. Magnant responded that basically the annual registration fee would be for the swimming pool, wading pool and water slide. These fees pay for the inspection and administration of the program, but are not specifically tied to the inspection of the pool. The Department contracts with the County Board of Health, through a 28E Agreement, for them to inspect pools and enforce the rules in their jurisdiction. Kibbie voiced surprise that a public hearing was not held.

There are two full-time inspectors and the fees go to the county. Magnant pointed out that only the inspectors and a half-time secretary are funded by this program. He estimated that registration fees to the Department would be $128,000 in addition to the plan review fees. Approximately $160,000 would go directly to the counties. No formal action.

Ch 79

Christie briefed the Committee on amendments to Chapter 79, "Public Health Nursing." No questions or comments.

Ch 131

Ireland presented amendments to Chapter 131, "Basic Emergency Medical Care," in ARC 2585A with no comments or recommendations.

Ch 132

There was brief discussion of amendments to Chapter 132 but no recommendations.

HEALTH (Cont'd)

133.1, 133.2

In review of amendments to rules 133.1 and 133.2 regarding white flashing lights, Priebe was assured that school buses were not affected. Ireland stated that the rules will implement Iowa Code Supplement section 321.423 and use of four-way flashing lights in conjunction with the white lights will be eliminated.

Doyle was informed that the amendments did not apply to vehicles of sheriffs or deputies which have the four headlights that alternate. White lights are restricted to those emergency care providers who use their personal vehicles. No formal action.

PUBLIC SAFETY DEPARTMENT

The Department was represented by Michael Coveyou and Roy Marshall who presented amendments to Chapter 5, Filed as ARC 2626A in IAB 12/11/91. There were no questions or Committee recommendations.

NATURAL RESOURCE COMMISSION

The Commission was represented by Victor Kennedy and Nancy Exline for the Noticed rule, ARC 2646A, appearing in IAB 12/25/91 which amends 61.5(7)d and 61.6(4) relating to state parks and recreation areas.

Exline explained these rules basically apply the same standards for containment of pets within designated campgrounds and recreation areas as are in effect in state parks and forests. They also eliminate the number of equine animals that can be hitched to certain types of rails in designated campground at Brushy Creek. These rules were requested by the Brushy Creek advisory group. The stabling limitation for tying to trailers applies only in the designated campground. When the overflow campground is in use, the horses can be stabled to their trailer because there are no hitching rails provided in that area.

Schrader asked if the overflow area being created would adjoin the preserve and Exline said it would not.

Exline informed Tieden that a move into the newly acquired southern area was not possible since they were unable to acquire a prime piece of land with the type of physical facilities, topography, etc. which would allow construction of a campground. This may be accomplished later.

Discussion followed as to what was a reasonable length of time that a horse could be tied to a trailer.

Kibbie wondered why the public hearings were not held in areas of those affected and Exline stated that some hearings are held throughout the state.

Hearing Request

Priebe and Kibbie formally requested that a hearing be scheduled in Fort Dodge.

Recess

Chairman Priebe recessed the Committee for lunch at 12:05 p.m. and reconvened it at 1:25 p.m.

TRANSPORTATION

The following agenda was before the Committee:

TRANSPORTATION DEPARTMENT[761]

Corrective amendments to chs 1, 4, 10, 163, 164, 180, 400, 405, 411, 420, 421, 431, 480, 700, 710, 715, 720, 750, 802, 910, 920 to 924, Notice ARC 2588A 12/11/91

Recovery of damages to highway facilities, ch 40, Notice ARC 2587A 12/11/91

General requirements and covenants for highway and bridge construction, 125.1, Filed Emergency ARC 2656A 12/25/91

Vehicle registration and certificate of title — documents retained by county treasurer, 400.4(8), Filed ARC 2627A 12/11/91

(Continued on next page)

DOT (Cont'd.)

Vehicle registration and certificate of title—junking certificate, 400.13(3)"c," 400.23(3), Filed
ARC 2622A 12/11/91
SPECIAL REVIEW Fifth wheel trailers—brakes and safety chains

R. L. Humphrey, J. C. Hocker, Julie Fitzgerald, Fred Walker, Robert Student, Dennis Ehlert, Michael Krohn and Jan Hardy represented the Department.

Chs 1 et al.

Fitzgerald briefed the Committee on ARC 2588A which included corrective amendments to Chapters 1 et al. Priebe inquired why the telephone system was changed and Fitzgerald responded she thought additional numbers were needed.

In 405.12(1)c and 405.15(1)e, Metcalf suggested clarification that of the $10 to enforcement, $5 will be transferred to the general fund.

Walker, Transportation Safety Officer, presented a new Chapter 40 which sets out policy for recovering damages to highways.

Responding to Priebe, Walker said that an incident would be documented as to labor costs and materials involved and would not misrepresent the situation prior to the accident.

In 40.5(2)g, Walker clarified for Coyle that the costs incurred would be for the permanent repair of the facility at some time after the accident. Doyle requested Royce to contact the Ombudsman to see if the language were acceptable.

There was discussion of 40.4 relating to damages at the accident scene.

Royce advised that the statute provides ". . .the policy shall exclude the recoverable damages, the costs of traffic control at the scene of the accident." He thought the additional phrase, ". . .during the period required to conduct the initial investigation and arrange for care of the injured" could be narrower than the law. Walker commented that this was their interpretation of the initial investigation.

Schrader noted that he had drafted the statute and did not believe the language in question was narrower. His intent was that families of victims would not be billed for cleanup costs for damages at the immediate scene of the accident—e.g., sanding or removal of debris or oil. He requested the Department to expand on the exclusions in the rule.

Hedge wondered about policy prior to the Act and Walker said billing was done but the Department did not always collect.

125.1, 400.4

There were no questions re amendments to 125.1 or 400.4(8).

400.13, 400.23

In ARC 2622A, re a hypothetical situation, Ehlert informed Doyle that in order to retitle a car with five damaged parts, he would have to go through the process for salvage vehicle repair and have the component parts checked. A good title may be possible once the component parts are repaired.

Special Review

Priebe then brought up for special review the matter of brakes and safety chain requirements for fifth-wheel trailers. Because federal regulations have been adopted, he thought that some people were not informed about the law.

Krohn explained that two chains are required in certain instances with hazardous materials that are very specific to the types of trailers and cargo-tank type of trailers. Whereas the fifth wheel or the average trailer must have a safety chain.

DOT (Cont'd.)

Priebe commented that drivers were unaware of the requirements and have been cited for violations. Krohn thought Priebe was referring to break-away devices—any trailer over 3,000 lbs. must have brakes on all wheels as well as a break-away device, required since 1979. Krohn said the break-away device does not have to be electric, it can be spring-operated or air-operated hydraulics. Priebe had not heard of any problems until the last three months.

Maulsby commented that he had driven fifth wheel vehicles for 10 or 15 years and had not been called on this and Krohn explained that different regulations govern semi-tractor, semi-trailer type of operations.

Krohn cited federal regulations 393.43 for the break-away requirements and Iowa Code section 321.462 addresses chains.

Krohn and Doyle discussed strength of the chains for towing and surge brakes. Krohn said if this referred to travel trailers specifically, this would be acceptable as long as there was a safety chain. He pointed out that a trailer or travel trailer transporting personal goods would be exempt from federal regulations.

Priebe asked about towing from the bumper and Krohn stated that a safety chain and the brake-away device would be required. He added that a farm wagon (hauling corn) or implement of husbandry would not be considered as a trailer and the regulations would not apply.

Krohn said the key is that the single or combination vehicle ratings have to be over 10,000 lbs. He attributed possible increase in citations to annual inspection recently implemented. The same mentioned vehicles over 10,000 lbs. require an annual inspection.

Pavich in the chair.

UTILITIES DIVISION

Cynthia Dilley, Vicki Place and Don Stursma appeared for the following agenda and there were no recommendations:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Electric utility service and safety, 20.1(3)"s," 20.2(2), 20.2(4)"g" and "w," 20.2(5)"a" and "b," 20.4(7], 20.4(15)"h"(4) and (6), 20.4(15)"j," 20.5(2)"a" and "b," 20.7(9), 25.1(1), 25.2(2), 25.2(2) "a," "d," and "e," 25.3 to 25.5, Filed ARC 2591A 12/11/91

Electric utility service and safety — guy markers and electric line clearances, 25.2(1), 25.2(2)"b" to "d," Notice ARC 1887A Terminated Amended Notice ARC 2589A 12/11/91

Electric utility service and safety — line clearances of grain bins, 25.2(2)"b"(5), 25.2(3), Amended Notice ARC 2590A 12/11/91

Deletion of reference to rate case expense, 35.6(1), Filed ARC 2654A 12/25/91

INSPECTIONS AND APPEALS

Chairman Priebe took the chair and recognized Mary Oliver, Inspections and Appeals, to respond to questions raised at the December ARRC meeting concerning businesses in care facilities—ARC 2520A published in IAB 11/13/91. It was her understanding that the Committee preferred specifics. Oliver spoke with the drafter of the legislation and he found the rules to be acceptable as written.

Oliver continued that the Department wanted to allow flexibility to cover the myriad of situations—safety and disturbance of residents were of major importance.

INSPECTIONS AND APPEALS (Cont'd.)

Kibbie and Oliver discussed activities in a veterans' home—barber shop, library, doctor's office, etc., and what effect the rules would have as far as entrances, exits, and service of residents. Oliver stressed the Department would scrutinize a new business that was interested in moving to the facility. They would follow up on any complaints. Oliver clarified that the rules were not applicable to hospitals. No Committee action.

No Reps

No agency representatives requested to appear for the following:

ARCHITECTURAL EXAMINING BOARD[193B]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Description of organization, registration, rules of conduct, disciplinary action, 1.5, 2.3(1), 3.1(5), 4.1(6)"d" to "f," ch 5, Filed ARC 2642A 12/25/91

PERSONNEL DEPARTMENT[581]
Definitions; classification; recruitment, application, and examination; grievances and appeals; benefits, 1.1, 3.1(1), 3.2(1), 3.5(5), 5.2(7), 5.4(2)"c," 12.1(1)"c," 12.2(5), 15.6(4)"a" to "d," 15.6(5)"b," 15.6(7)"a" and "g," 15.6(8)"e," 15.6(10)"c," 15.6(11)"f," 15.7, 15.8, Filed ARC 2606A 12/11/91
Background checks, 5.3(3), Filed ARC 2605A 12/11/91

STATUS OF WOMEN DIVISION[435]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Mentor advisory board, ch 6, Filed ARC 2596A 12/11/91

SUBSTANCE ABUSE COMMISSION[643]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Consent for the sale of goods and services, ch 7, Notice ARC 2610A 12/11/91

Next meeting Adjournment

There was unanimous consent to schedule the next meeting for February 3, 1992. Chairman Priebe adjourned the meeting at 2:30 p.m.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED:

Berl E. Priebe

Chairman